IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.718 OF 2006

In

NOTICE OF MOTION NO.125 OF 2006

In

SUIT NO.67 OF 2006

Dr.Ravi B. Shah : Appellant

(Orig. Plaintiff)

V/s.

Kiran Dharamsey Asher & Ors. : Respondents

(Orig.Defendants)

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Mr.V.A.Thorat, senior counsel, with Mr.Surel Shah and Mr.A.L.Gala for the appellant.

Mr.M.C.Shah with Mr.R.S.Tripathi and Mr.J.R.Vakil i/b. M/s.J.R.Vakil & Associates for respondent nos.1 & 2.

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CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATE : OCTOBER 3, 2006.

P.C.

1. We heard Mr.V.A.Thorat, senior counsel for the appellant and perused the documents referred to by him.

2. It is not in dispute that M/s.R.B.Shah & Co., was

constituted by a Deed of Partnership on 16.9.1996 between the present appellant and the respondent no.2, viz., Milburg Kiran Asher. It is also not in dispute that on 5.6.2000, the appellant retired from the said partnership and the respondent no.1, viz., Kiran Dharamsey Asher was inducted as a new partner in the said firm. On 5.6.2000 i.e. the date of retirement of the appellant from the firm, two documents were executed. The first document that was executed on that date was the Retirement Deed whereby the appellant retired from the said partnership firm. Inter alia, the recital (clause 3) of the Retirement Deed provides that all accounts of the partnership inter se between the partners and the firm have been settled and the share of the retiring partner (appellant herein) in the profits of the firm, in the capital and all its assets have been settled and adjusted in the manner as mutually agreed upon. It thus leaves no manner of doubt that upon retirement of the appellant from the partnership firm, his share in the capital and all its assets were fully settled and adjusted. The second document that was executed on 5.6.2000 is the Deed whereby, upon retirement of the appellant as a partner of the firm, the said firm continued to carry on the business and also thereby a new partner (defendant no.1), viz., Kiran Dharamsey Asher was inducted in the partnership firm. A perusal of the said deed would show that the

properties that were developed by the firm were acquired in the name of the appellant, but it was the respondent no.1 Kiran Dharamsey Asher who provided the funds for acquisition of the said property. As a matter of fact, as on 31.5.2000, the partnership firm had to pay to the defendant no.1 a sum of Rs.1,64,41,340/- towards the loan taken by the appellant and the other partner Milburg Kiran Asher for purchase of the said property.

3. The aforesaid facts and the documents available on record leave no manner of doubt that, prima facie, the appellant (plaintiff) has failed to establish that he is the owner of the suit property. Obviously, in view thereof, the learned Motion Judge cannot be said to have committed any error in refusing to grant interim relief to the plaintiff.

4. Appeal has no merit and is dismissed in limine.

R.M. LODHA, J.

S.A. BOBDE, J.